

BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

AUDREY KELLY, P.T.,
8901 West Manzanita Drive
Peoria, Arizona 85345

Physical Therapist License No. PT 12550

Respondent.

Case No. 1D 2004-63825

OAH No. N20060200059

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on August 25, 2006.

Gail M. Heppell, Supervising Deputy Attorney General, represented the Physical Therapy Board of the State of California.

Audrey Kelly, P.T., did not appear.

The record was closed and the matter submitted on August 25, 2006.

FACTUAL FINDINGS

1. Steven K. Hartzell is the Executive Officer of the Physical Therapy Board of California (the Board). He made the charges and allegations contained in the Accusation in his official capacity only pursuant to the authority of Government Code section 11503. The Accusation was filed on March 18, 2005 and was served on respondent. The Board has jurisdiction to revoke, suspend for not more than 12 months or impose conditions on any license to practice as a physical therapist in the State of California.¹

2. The Board's official records of licensure show that the Board issued Audrey Rachel Kelly, P.T., Physical Therapist license number PT 12550 on December 21, 1984. The license has been full force and effect since issuance and is current. The license has been recently renewed. Ms. Kelly's address of record has not been changed.

¹ Business and Professions Code section 2660.

3. Notice of the date, time and place of the evidentiary hearing was served on Ms. Kelly at her address of record by both certified and first class mail, pursuant to Government Code sections 11505 and 11509. Ms. Kelly's address of record is the same address that Ms. Kelly used on her Notice of Defense and on correspondence with the Supervising Deputy Attorney General dated April 8, 2005. The matter was previously scheduled for an evidentiary hearing before Hon. Karen Brandt, Administrative Law Judge, on July 12, 2006. The Supervising Deputy Attorney General served the Notice of Hearing for the July 12, 2006 hearing to the same address as the instant Notice. Ms. Kelly called the Office of Administrative Hearings on July 12, 2006, and requested a continuance of the evidentiary hearing. Her call was put on a speaker phone in the courtroom. Ms. Kelly's motion for a continuance was heard via the telephone, and was granted due to Ms. Kelly's claim of ill health that prevented her from attending. Ms. Kelly personally selected the August 25, 2006 date for rescheduling of this matter during the call. Ms. Kelly failed to appear for the instant evidentiary hearing. Good cause does not exist for her failure to appear. The matter was conducted as a default, pursuant to Government Code section 11520.

4. Ms. Kelly was licensed as a physical therapist in the State of Arizona during 2002 and 2003. Effective March 23, 2004, the Board of Physical Therapy of the State of Arizona (the Arizona Board) acted to suspend Ms. Kelly's Arizona license until such time as she provides missing documentation of treatment she rendered to patients of Nelson Pediatric Therapy. The Arizona Board also assessed a civil penalty of \$1,000.

5. Ms. Kelly wrote to the Supervising Deputy Attorney General on April 8, 2005. In her letter, Ms. Kelly confirmed the suspension of her license was still in effect as of that date. Ms. Kelly reported that her Arizona license expired under suspension in 2004 because she was unable to complete the continuing education requirements for renewal.

6. According to the Arizona Board's Decision, Ms. Kelly was employed by Nelson Pediatric Therapy between July 25, 2002 and February 11, 2003 as a physical therapist. Nelson Pediatric Therapy provides physical therapy and other services to children, most of whom are developmentally disabled or have communication impairments. Ms. Kelly treated between 35 and 37 patients per week. One of her job responsibilities was to carefully document all therapy and treatment provided to each patient, and to transmit that documentation to the clinic personally or electronically. Ms. Kelly was required to write weekly evaluations of patients, notes of daily treatments, progress reports and discharge summaries. Ms. Kelly was found to have failed to provide 50-60 percent of the required documentation for patients she treated at Nelson Pediatric Therapy. Since many of Ms. Kelly's patients were severely disabled and/or lacked communication abilities, the patients were unable to tell other caregivers what treatments they had received from Ms. Kelly. Ms. Kelly's failure to produce the patient records thus compromised the continuity of care for these patients.

7. Numerous unsuccessful attempts were made by Nelson Pediatric Therapy and by the Arizona Board's employees to persuade Ms. Kelly to produce the required patient treatment documentation. The disciplinary action followed.

8. The acts and omissions resulting in the Arizona Board's imposition of disciplinary action against Ms. Kelly are substantially related to the qualifications, functions and duties of a California physical therapy licensee. It is readily apparent that keeping accurate and complete treatment records for each patient seen is a key part of physical therapy practice in California. This is particularly so for patients unable to communicate, where missing or incomplete records cannot be reconstructed by asking the patient what treatments were received.

9. Ms. Kelly has not practiced physical therapy since she was discharged from Nelson Physical Therapy in February 2003, after failing to produce the missing patient documentation. As Ms. Kelly did not appear, there was no evidence presented of rehabilitation or in support of a conclusion that she is currently fit to practice.

10. The Supervising Deputy Attorney General submitted a certification of costs of investigation and enforcement pursuant to Business and Professions Code section 2661.5. The certification seeks recovery of \$365 in costs for the Supervising Deputy Attorney General's time billed to the Board for her work in filing and pursuing this matter. The costs are reasonable and were actually incurred in this matter.

LEGAL CONCLUSIONS

1. Business and Professions Code section 141 provides, in part:

For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by any other country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective licensing board.

[¶]...[¶]

2. The Board is subject to the provisions of the above statute as an agency of the Department of Consumer Affairs. As set forth in Factual Findings 3-8, inclusive, Ms. Kelly's license to practice physical therapy in Arizona was suspended by the Arizona Board for acts substantially related to physical therapy practice in California. Legal cause exists to revoke or suspend Ms. Kelly's license, pursuant to section 141.

3. Business and Professions Code section 2661.5 provides that an Administrative Law Judge may direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case. As set forth in Factual Finding 10, certification of the reasonable

costs of investigation and enforcement action in this matter were proved in the amount of \$353. *Zuckerman v. Board of Chiropractic Examiners*² requires the consideration of certain factors in determining the amount of costs to be assessed and awarded. The *Zuckerman* factors were considered in the making of the costs recovery award in this matter. The Board prevailed on all allegations. Respondent did not appear. There did not appear to be a factual or legal basis for a challenge to the allegations in the Accusation. There was an inference of financial hardship that might affect the award, but the amount of costs awarded is small and respondent failed to appear or to otherwise offer evidence of an inability to pay. This does not preclude respondent from working out a payment arrangement with the Board based upon a demonstration of hardship, but she must take the initiative to present evidence of hardship to the Board, in the event the hardship still exists. The costs are recoverable as part of any Order made in this matter.

4. There was no evidence presented of rehabilitation or current fitness to practice, as set forth in Factual Findings 6-9. Ms. Kelly's Arizona license expired under suspension. She advised the Supervising Deputy Attorney General that she has been unable to practice since she was terminated from Nelson Pediatric in early 2003. She was not able to renew her Arizona license because she has been unable to take the required minimum continuing education. Her Arizona license remained under suspension because she failed to provide the missing and incomplete patient treatment records. Under these circumstances, there is no option but to revoke Ms. Kelly's license.

ORDER

Physical Therapist License No. PT 12550, issued to Audrey Kelly, P.T., is REVOKED. Ms. Kelly shall repay the Board of Physical Therapy its costs of investigation and enforcement of \$353 within 30 days of the effective date of this Decision, or on such terms as the Board may arrange. As set forth in Business and Professions Code section 2662.5, subdivision (e), Mr. Kelly's license shall not be reinstated until such time as the costs are paid or she has entered into a payment plan with the Board as described in that section.

DATED: _____

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

² *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.